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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,250	02/18/2004	Floyd Backes	160-034	3137
34845	7590	12/15/2006	EXAMINER	
McGUINNESS & MANARAS LLP 125 NAGOG PARK ACTON, MA 01720			DUONG, FRANK	
			ART UNIT	PAPER NUMBER
			2616	

DATE MAILED: 12/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/781,250

Applicant(s)

BACKES ET AL.

Examiner

Frank Duong

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5 and 6 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is a response to communications dated 10/12/06. Claims 1-6 are pending in the application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 and 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Pinard et al (USP 5,815,811) (hereinafter "Pinard").

Regarding **claim 1**, in accordance with Pinard reference entirety, Pinard discloses a program product for use by a wireless device (2) in a wireless communications environment (Fig. 1) (*note: the process for mobile 2 associated with access points 5 discussed at col. 5, line 9 to col. 7, line 11 is equated to corresponding to the claimed "program"*), the program product comprising a computer readable medium having embodied therein a computer program for storing data, the computer program comprising:

logic for associating the wireless device (2) with a current access point (5) (*mobile 2 sends out probe packet for association with access point 5 is discussed at col. 5, lines 22-23*);

logic for ascertaining, by the wireless device (2), whether the wireless device (2) should attempt to associate with an alternative access point (5), the ascertaining logic operating at least in-part on indications of a level of attenuation of signal strength (RSSI) of transmissions from the alternative access point (5) where the alternative access point (5) transmits at less than full power (*lowest load factor*) (*RSSI calculation and load factor of all access points having best RSSI and low load factor is discussed at col. 5, line 65 to col. 6, line 13*); and

logic for requesting association with the alternative access point (5) if it is ascertained that the wireless device (2) should attempt to associate with said alternative access point (5) (*reassociation with another access point is discussed at col. 6, line 33 to col. 7, line 5 in the event that mobile 2 experiences unsatisfactory communication level or roams*).

Regarding **claim 2**, in addition to features recited in base claim 1 (see rationales discussed above), Pinard further discloses logic for automatically collecting, by the wireless device, information about the alternative access point, including an indication of the level of attenuation (col. 6, lines 14-15).

Regarding **claim 3**, in addition to features recited in base claim 2 (see rationales discussed above), Pinard further discloses wherein the logic for ascertaining ascertains that the wireless device should attempt to associate with the alternative access point if the alternative access point is closer than the current access point in terms of a biased distance which accounts for AP loading (*lowest loading factor*) (*col. 6, lines 1-13*).

Regarding **claim 5**, in addition to features recited in base claim 3 (see rationales discussed above), Pinard further discloses wherein the logic for requesting association requests association by sending a message to the alternative access point (*col. 5, lines 22-23 and col. 6, lines 36-41*).

Regarding **claim 6**, in addition to features recited in base claim 1 (see rationales discussed above), Pinard further discloses wherein the ascertaining logic also employs maximum potential signal strength of the alternative access point (5) (*best detected RSSI value is discussed at col. 5, line 65 to col. 6, line 1*).

Allowable Subject Matter

3. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record, considered individually or in combination, fails to fairly show or suggest the claimed program of base claim 1 and further limit with novel and unobvious limitations of *"wherein the logic for ascertaining ascertains that the alternative access point is closer than the current access point by: calculating a first biased distance between the wireless device and the current access point based on "x" samples; calculating a second biased distance between the wireless device and the alternative access point based on "y" samples where "y" is less than "x"; and ascertaining that the alternative access point is closer than the current access point if*

the second biased distance is less than the first biased distance," structurally and functionally interconnected with other limitations in a manner as recited in the dependent claim 4.

Response to Arguments

4. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Sinivaara et al (USP 7,020,439).

Feder et al (USP 6,522,881).

Engwer et al (USP 5,987,062).

Kostic et al (Pub. No. 2003/0134642).

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Duong whose telephone number is 571-272-3164. The examiner can normally be reached on 7:00AM-3:30PM, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynn D. Feild can be reached on 571-272-2092. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



December 13, 2006

FRANK DUONG
PRIMARY EXAMINER